TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1934

No. 120

THE UNITED STATES OF AMERICA, PETITIONER

vs.

GUARANTY TRUST COMPANY OF NEW YORK

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR CERTIORARI FILED JULY 30, 1934.
CERTIORARI GRANTED OCTOBER 15, 1934.

SUPREME COURT OF THE UNITED STATES

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1 In United States Circuit Court of Appeals for the Second Circuit

UNITED STATES OF AMERICA, PLAINTIFF-APPELLEE
v.
GUARANTY TRUST COMPANY OF NEW YORK, DEFENDANT-APPELLANT

Statement under Rule XIII

The above-entitled action was commenced by the service of a summons on the defendant on or about September 5, 1929, and the complaint was served on or about January 22, 1930. Issue was joined by the service of an answer to the complaint on or about April 14, 1930. The complaint was filed on January 23, 1930, and the answer was filed on April 14, 1930. The original parties were those above named. The defendant was at no time arrested, and no bail has been taken and no property attached.

This action was tried before Honorable Francis G. Caffey, United States District Judge, and a jury of one, on May 15, 1933, and judgment was given in favor of the plaintiff. No question herein has been referred to a commissioner, master, or referee.

The judgement herein appealed from was entered on June 1, 1933. This appeal was taken on July 11, 1933.

2 In United States District Court, Southern District of New York

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UNITED STATES OF AMERICA, PLAINTIFF
v.
GUARANTY TRUST COMPANY OF NEW YORK, DEFENDANT

Summons

To the above-named defendant:

You are hereby summoned to answer the complaint in this action, and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the plaintiff's attorney within twenty days after the service of this summons, exclusive of the day of service. In case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Witness, the Honorable John C. Knox, judge of the District Court of the United States for the Southern District of New York, at the city of New York, this fourth day of September, A. D. 1929.

ALEX. GILCHRIST, Jr., *Clerk.*

CHARLES H. TUTTLE,
U. S. Attorney, plaintiff's attorney,
Office and Post Office Address, U. S. Attorney,
U. S. Courthouse and P. O. Building, Borough of
Manhattan, New York City.

3 In United States District Court, Southern District of New York

[Title omitted.]

Complaint

The plaintiff, by its attorney, Charles H. Tuttle, United States attorney for the Southern District of New York, complaining of the defendant herein, alleges upon information and belief:

First. That at all times hereinafter mentioned the plaintiff was and now is a corporation sovereign.

Second. That at all times hereinafter mentioned the defendant, Guaranty Trust Company of New York, was and now is a corporation duly organized and existing under the banking laws of the State of New York for the transaction of business in the city of New York, southern district of New York.

Third. That on or about the 29th day of October 1921 plaintiff drew its check no. 40282540 on the Treasurer of the United
4 States for the sum of one hundred and sixty ($160) dollars, to the order of Louis Macakanja, a photostat copy of which check is hereto attached and marked "Plaintiff's Exhibit A", and thereupon forwarded same by mail to the said Louis Macakanja at 37 Sasava Kot Glina, Z. J. Maja, Jugoslavia SHS.

Fourth. That the said Louis Macakanja, the payee of said check, nor anyone on his behalf, ever received or endorsed the same.

Fifth. That the letter containing said check was taken or received in Jugoslavia by some person other than the payee thereof, and that thereafter the name of Louis Macakanja was written on the back of the said check by some person other than the payee thereof, and by a person who was not authorized to sign the name of the said payee, and who had no right, title, or interest in or to said check, with possession thereof, and no right or authority to receive, endorse, or dispose of same.

Sixth. That the aforementioned check was endorsed by various parties and as a result of said indorsements said check contained a guarantee of all prior endorsements, as more fully appears from the photostat copy of said check and endorsements thereon, attached hereto and made a part of this complaint and hereinabove referred to as exhibit A.

Seventh. That by virtue of all the endorsements hereinbefore mentioned, all of the said endorsers warranted and guaranteed that
5 all prior endorsements were genuine and that each had full authority to make the endorsements aforesaid, and each thereby agreed that it would indemnify the United States of America against any loss occasioned by any such endorsement if made without authority.

Eighth. That the said check was subsequently presented to the plaintiff by the defendant for payment and the plaintiff thereupon paid the defendant the full amount of said check.

Ninth. That the name "Louis Macakanja" endorsed on said check was forged; that the defendant had no right, title, or interest of, in or to said check, or to the possession thereof, and no right or authority to collect the same.

Tenth. That by reason of the forged endorsement of the payee's name on the check hereinbefore mentioned, the plaintiff has been damaged in the sum of one hundred and sixty ($160) dollars, payment of which has been duly demanded and refused.

Wherefore, plaintiff demands judgment against the defendant herein for the sum of one hundred and sixty ($160) dollars, with interest thereon from the 29th day of October 1921, together with the costs and disbursements of this action.

CHARLES H. TUTTLE,
United States Attorney, Attorney for Plaintiff,
Office and P. O. Address, U. S. Courts and P. O. Bldg.,
Borough of Manhattan, City of New York.

6 [*Duly sworn to by Mario G. di Pirro; jurat omitted in printing.*]

7 *Recital re Exhibit A to complaint*

Photostatic copy of check drawn by plaintiff on the Treasury of the United States in the sum of one hundred and sixty dollars ($160) dated October 29, 1921, bearing no. 4028254, to the order of Louis Macakanja.)

[A photostatic copy of the above check appears in this record under the heading of "Plaintiff's Exhibit No. 2" in the bill of exceptions.]

In United States District Court

[Title omitted.]

Answer

Defendant Guaranty Trust Company of New York, by its attorneys, Davis, Polk, Wardwell, Gardiner & Read, for its answer to the complaint herein, alleges as follows:

First. Denies that it has any knowledge or information sufficient to form a belief as to the allegations, or any of them, contained in paragraphs fourth and fifth of the complaint.

8 Second. Denies that it has any knowledge or information sufficient to form a belief as to the allegations, or any of them, contained in paragraph third of the complaint, except that on or about the 29th day of October, 1921, plaintiff drew its check no. 40282540, on the Treasurer of the United States, for the sum of one hundred and sixty dollars ($160), to the order of Louis Macakanja, a photostatic copy of said check being attached to the complaint and marked "Exhibit A."

Third. Denies the allegations and each of them contained in paragraph seventh of the complaint.

Fourth. Denies the allegations and each of them contained in paragraph ninth of the complaint, except that defendant denies knowledge or information sufficient to form a belief as to the allegation that the name "Louis Macakanja" endorsed on said check was forged.

Fifth. Denies the allegations and each of them contained in paragraph tenth of the complaint, except that defendant admits that payment has been demanded and refused.

Further answering the complaint and as an affirmative defense to the alleged cause of action set forth in the complaint defendant alleges upon information and belief as follows:

Sixth. That the said check was negotiated and transferred in the Kingdom of Jugo-Slavia.

9 Seventh. Under the law of Jugo-Slavia, upon the negotiation and transfer of a check every transferee, if he gives valuable consideration and takes without actual notice of any alleged forgery or other defect, in the absence of fraud or gross negligence, obtains a good title to the instrument, even if the endorsement of the payee is forged, and acquires the right to collect and retain the proceeds.

Eighth. That the provisions of the law of JugoSlavia set forth in this answer by defendant were in force and effect at the times said check was negotiated and transferred and collected and are still in force and effect.

Ninth. Each of the transferees of the check mentioned in the complaint, gave valuable consideration and took without notice of any alleged forgery or other defect, and without fraud or negligence, and thereby obtained a good title to the instrument and acquired the right to collect and retain the proceeds.

Tenth. Defendant, under the law of JugoSlavia, duly obtained title to said check, as aforesaid, and duly collected and retained the proceeds.

Wherefore, defendant demands judgment dismissing the complaint herein, together with the costs and disbursements of this action.

DAVIS, POLK, WARDWELL, GARDINER & REED,
Attorneys for Defendant.,
Office & P. O. Address, 15 Broad Street, Borough of Manhattan, city of New York.

10 [*Duly sworn to by Arthur C. Vogt, jurat ommitted in printing.*]

11 In United States District Court For the Southern District of New York

Before Hon. Francis G. Caffey, J., and a jury of one

UNITED STATES OF AMERICA, PLAINTIFF

v.

GUARANTY TRUST COMPANY OF NEW YORK, DEFENDANT

Bill of exceptions

NEW YORK, *May 15, 1933.*

Appearances

George Z. Medalie, United States attorney, attorney for plaintiff, by G. B. Schoonmaker, of counsel.

Davis, Polk, Wardwell, Gardiner & Reed, attorneys for defendant, by Russel S. Coutant and Francis W. Phillips, of counsel.

Stipulation as to trial

The parties stipulated that the action could be tried before the court and a jury of one with the same effect as if it were tried with a full jury of twelve. A jury of one was duly impanelled and sworn.

12 The plaintiff introduced in evidence the following stipulation of facts which was marked "Plaintiff's Exhibit No. 1."

Plaintiff's exhibit no. 1

United States District Court, Southern District of New York

L. 45—245

UNITED STATES OF AMERICA, PLAINTIFF

v.

GUARANTY TRUST COMPANY OF NEW YORK, DEFENDANT

It is hereby stipulated and agreed by and between the attorneys for the respective parties in the above-entitled action that the following facts are deemed to be true for the purpose of this action:

1. That at all the times hereinafter mentioned the defendant, Guaranty Trust Company of New York, was and now is a corporation duly organized and existing under the banking laws of the State of New York and had and now has a principal office for the transaction of business in the city of New York, Southern District of New York.

2. That at all the times hereinafter mentioned the defendant was and still is a member of the Federal Reserve Bank System in the Second Federal Reserve District.

13 3. Check no. 40282540 was drawn on the Treasurer of the United States, dated October 29, 1921, to the order of Louis Macakanja, 37 Sasava Kot Glina, Z. P. Maja, Jugoslavia, in the amount of $160, a photostatic copy of which is annexed to the complaint herein, and said check bears the purported endorsement of the payee thereof, made in Jugo-Slavia, and was transferred and delivered to the "Merkur" Bank of Jugo-Slavia, for a valuable consideration, on or about November 30, 1921.

3a. The original or a photostatic copy of the said check may be received in evidence.

4. The said purported endorsement of the said payee on the said check is a forgery.

5. The said check bore the following printed condition on the back thereof:

"NOTICE TO THE PAYEE

"This check must be endorsed in ink or in indelible pencil on the line below by the person in whose favor it is drawn and the name must be spelled exactly the same as it is on the face of the check.

"If endorsement is made by mark (x) it must be witnessed by two persons who can write, giving their place of residence in full.

"_____ _____.

"(Signature)."

14 6. That at all the times hereinafter mentioned the said condition has been and still is printed on Government checks generally.

6a. The following is the English version of what appears on the back of the aforesaid check (including the printed matter set forth in paragraph 5 hereof):

"Form approved by the Comptroller of the Treasury December 17, 1917.

I acknowledge the receipt of the sum of $160 (one hundred sixty dollars).

NOTICE TO THE PAYEE

This check must be endorsed in ink or in indelible pencil on the line below by the person in whose favor it is drawn and the name must be spelled exactly the same as it is on the face of the check.

If endosement is made by mark (x) it must be witnessed by two persons who can write, giving their place of resident in full.

LOUIS MACAKANJA.
(Signature.)

Witnesses:
GEORGE MRDJEN.
STOJAN STOIC.

It is officially certified that the receiver of the money as well as the witnesses, well known to this municipal administration, have in their own handwriting subscribed the foregoing instrument. The holder of this check is identical with the beneficiary thereof.

THE MUNICIPAL ADMINISTRATION OF MAJA,
November 30, 1921.

(Stamp of the Municipal Administration of Maja.)

VUJAKLIJA, *Mayor.*

"Merkur" Banking and Exchange Business, Stanko Shon, Zagreb

Pay to the order of Guaranty Trust Co. of New York, New York City, N. Y.

SLAVENSKA BANK D. D. ZAGREB,
(——— ———)
(Signatures of officials of the Slavenska Bank).

6b. The stamped endorsement of Guaranty Trust Company of New York also appears on the back of the check, together with the stamp of the Federal Reserve Bank of New York.

7. The said "Merkur" Bank received the said check in good faith, and took the same without actual notice of the forgery in the endorsement of the payee or any other defect, and the said "Merkur" Bank in taking said check was not guilty of any fraud or negligence.

16 8. The transfer of the said check as set forth in the foregoing paragraphs, numbers 3 and 7, took place in the Kingdom of Jugo-Slavia.

9. Shortly thereafter, and prior to or on December 3, 1921, the said "Merkur" Bank duly endorsed the said check, and transferred and delivered the same to the "Slavenska" Bank, D. D., Zagreb, in Jugo-Slavia, for a valuable consideration.

10. The said "Slavenska" Bank received the said check in good faith and took the same without actual notice of the forgery in the endorsement of the payee or any other defect, and the said "Slavenska" Bank in taking the said check was not guilty of any fraud or negligence.

11. The transfer of the said check, mentioned in the foregoing paragraphs, numbers 9 and 10, took place in the Kingdom of Jugo-Slavia.

12. On or about December 3, 1921, the said "Slavenska" Bank, for value received, duly endorsed the said check to the order of the Guaranty Trust Company of New York, the defendant herein, and on the same day forwarded the said check to the said defendant by mail.

12a. The said Guaranty Trust Company of New York received the aforesaid check by mail from the Slavenska Bank on or about December 21, 1921, in good faith and took the same without actual notice of the forgery in the endorsement of the payee thereof or any other defect, and the said Guaranty Trust Company of
17 New York in taking the said check was not guilty of any fraud or negligence.

13. The endorsement on the said check, as set forth in the foregoing paragraph numbered 12, was made in the Kingdom of Jugo-Slavia.

14. The law of the Kingdom of Jugo-Slavia in reference to checks and bills of exchange is as follows:

"Upon the negotiation and transfer of a check or bill of exchange each transferee, endorsee, or holder thereof obtains a good title to the instrument and acquires the right to collect and retain the proceeds thereof, even though the endorsement of the payee is forged where

"(a) The instrument purports to bear a chain or series of endorsements from the payee of the instrument to the transferee, holder or endorsee thereof; and

"(b) The said transferee, holder or endorsee gives valuable consideration for the instrument; and

"(c) The said transferee, holder or endorsee takes the instrument without actual notice of any forgery or other defect in the instrument and is not guilty of any fraud or gross negligence in taking the instrument:

"The law of Jugo-Slavia further provides that

18 "(a) When an endorsement follows a blank endorsement there is a presumption of law that the person who executed the endorsement has acquired title to the instrument under the blank endorsement; and

"(b) The transferee, holder or endorsee of the instrument is under no duty or obligation to investigate the genuineness of prior endorsements.

"Under the law of Jugo-Slavia, an endorser does not guarantee or warrant the genuineness of prior endorsements.

"The law, as above stated, was in 1921 and still is in full force and effect in Jugo-Slavia."

15. That the defendant, upon receipt of the said check, stamped upon the back thereof "Previous endorsements guaranteed" and then presented the check to the Federal Reserve Bank of New York for collection.

16. That circular number 258, of the Federal Reserve Bank of New York, effective from March 1, 1920, until April 1, 1922, contained the following rules and regulations:

"GOVERNMENT CHECKS

"Member banks of this district, other than members of the New York Clearing House Association, may include in their remittances to the Federal Reserve Bank of New York for immediate
19 credit at par, but subject to final payment by the Treasurer of the United States, all Government warrants and checks drawn on the Treasurer of the United States.

"In New York City member banks may send Government warrants and checks to the Federal Reserve Bank through the clearing house subject to final payment by the Treasurer of the United States.

"The Government has for many years exercised the right of returning at any time warrants and checks which for any cause have not been considered good, and the Federal Reserve Bank of New York as fiscal agent of the United States as a condition of receiving Government warrants and checks on the Treasurer of the United States from member banks or through the New York Clearing House reserves the right to charge back any such item and return the same at any time unconditionally to the institution from which it was received.

"CONDITIONS GOVERNING THE USE OF THE SYSTEM

"Every bank sending checks or other cash items to the Federal Reserve Bank of New York or to another Federal Reserve bank direct will be understood to have agreed to the terms and conditions herein set forth and to have thereby specifically agreed that in receiving such items the Federal Reserve Bank of New York will act only as the colleting agent of the sending bank, will
20 assume no responsibility other than for due diligence and care in forwarding such items promptly, and will be authorized to send such items for payment direct to the bank on which they are drawn, or, at its discretion, to another agent for collection.

"The right is reserved to withdraw, add to, or amend at any time or from time to time any or all of the foregoing rules and regulations with or without previous notice."

17. The defendant had knowledge of the rules and regulations contained in the said circular number 258 and the said circular was in force at the time the defendant presented the said check to the Federal Reserve Bank of New York.

18. That upon receipt of the said check the Federal Reserve Bank of New York sent the said check to the Treasurer of the United States for payment.

19. That at the time mentioned in paragraph 18 hereof Treasury Department Circular No. 176, dated December 31, 1919, was in effect and contained the following regulations governing the deposit of public moneys and payment of Government warrants and checks:

"PAYMENT OF GOVERNMENT WARRANTS AND CHECKS

"29. Federal Reserve banks and branches: Federal Reserve
21 banks and branches shall make arrangements to cash Government warrants and checks drawn on the Treasurer of the United States for disbursing officers of the War Department and Navy Department and other Government officers, provided that satisfactory identification of the officer shall be furnished. The Treasurer will upon special request advise Federal Reserve banks and branches as to the balances to the credit of such officers. Each Federal Reserve bank and branch will cash Government warrants and checks drawn on the Treasurer of the United States when they are presented and properly indorsed by responsible incorporated banks and trust companies who guarantee all prior indorsements thereon, including the indorsement of the drawer when the check is drawn in his favor. Warrants and checks cashed by Federal Reserve banks and branches shall be charged to the account of the Treasurer of the United States, subject to examination and payment by the Treasurer. Federal Reserve banks and branches will not be expected to cash Government warrants and checks presented direct to the bank by the general public.

"30. National bank depositaries and assistant treasurers: Each regular national bank depositary with an authorized balance to the credit of the Treasurer of the United States, and each Assistant Treasurer of the United States will cash Government war-
22 rants and checks drawn on the Treasurer of the United States when they are presented and properly indorsed by responsible holders who guarantee all prior indorsements thereon, including the indorsement of the drawer when the check is drawn in his favor. Warrants and checks so cashed by Assistant Treasurers shall be charged to the account of the Treasurer of the United States, subject to examination and payment thereof by the Treasurer. Regular national bank depositaries are not required to charge Government warrants and checks cashed by them in the account of the Treasurer of the United States, except in cases where checks drawn on the Treasurer of the United States are deposited for the official credit of the drawer or the credit of other Government officers in the account of the Treasurer of the United States and in cases where cash is furnished to a Government officer upon the warrant or check for pay roll or other expenditures.

"31. Payment by Treasurer: The Treasurer of the United States reserves the usual right of the drawee to examine, when received, all Government warrants and checks cashed by Assistant Treasurers, Federal Reserve banks and branches, and national bank depositaries and to refuse payment thereof. Three years after the close of the fiscal year (June 30) in which they are drawn, warrants and dis-

bursing officer's checks are not payable by the Treasurer of
23 the United States, but should be sent to the Secretary of the Treasury, Division of Public Moneys, for payment from the 'outstanding liabilities appropriation.'"

20. That on or about January 12, 1922, S. P. Gilbert, Jr., Under Secretary of Treasury of the United States, sent the following letter to the defendant, Guaranty Trust Company of New York, in reference to the aforesaid Circular No. 258 of the Federal Reserve Bank of New York and to the aforesaid Treasury Department Circular No. 176:

THE UNDER SECRETARY OF THE TREASURY,
Washington, January 12, 1922.

The GUARANTY TRUST COMPANY,
140 Broadway, New York City.

SIRS: The State Department advised the Treasury under date of December 10, 1921, that the American consul general at Warsaw, Poland, reported that the Polish State Loan Bank had refused to purchase or accept certain United States Government checks because of information received by it from its New York correspondents to the effect that "the Government of the United States and the offi-
cers thereof reserve the right to charge back at any later date
24 any instruments which they have previously paid." Further advice is now received from the State Department that the Guaranty Trust Company is one of the New York correspondents of the Polish State Loan Bank referred to.

Within the past two months difficulty has been experienced in the cashing of checks drawn upon the Treasurer of the United States not only in Poland but also in Vienna and various parts of England. The reason assigned in each case is that information to the same effect as that quoted above has been received from the bank's New York correspondent. As the situation was causing considerable embarrassment and even hardship to representatives of this Government, the matter was taken up with another New York bank which was reported to have furnished information quoted above and with the Federal Reserve Bank of New York, upon whose Circular No. 258 of March 1, 1920, the statement was understood to have been based. As a result the Federal Reserve Bank of New York has undertaken a revision of the Circular No. 258, eliminating the paragraph which had given rise to misunderstanding of the true practice of the Treasurer of the United States with regard to the return of Government checks, and the New York bank in question agreed to omit stamping the objectionable advice upon Government items.

In view of these facts and inasmuch as the practice of the
25 Treasury Department with regard to the return of checks drawn upon the Treasurer of the United States as now estab-

lished is in accordance with commercial practice, I trust that, if it has been the practice, as reported, of your bank to advise foreign correspondents that the Government of the United States and the officers thereof reserve the right to charge back at any later date any instruments which they have previously paid, it will be possible to make immediate modification of this practice, so as to make the treatment of checks drawn upon the Treasurer of the United States conform to the practice with regard to the treatment of commercial items.

It is true that Government warrants and checks, inasmuch as they are drawn upon the Treasurer of the United States, are subject to final payment by the Treasurer and that the Treasurer reserves the usual right of the drawee to examine, when received, all Government checks cashed by Federal Reserve bank or branches or national bank depositaries and refuse payment thereon as set forth in paragraphs 29 to 31, Treasury Department Circular No. 176, dated December 31, 1919, a copy of which is enclosed. Immediate examination is made in accordance with commercial practice and checks are returned only in case of no funds, forgery, raising or other material defects for which checks are returned by drawee banks under commercial practice, and consequently there is no reason whatever for discrim-
26 ination by the Polish State Loan Bank or any foreign or domestic bank against United States Government checks, upon the grounds reported.

By direction of the Secretary.

Respectfully,

S. P. GILBERT, Jr.,
Under Secretary.

21. That the defendant, at the time it presented the said check to the Federal Reserve Bank of New York, had knowledge of the regulations contained in the Treasury Department Circular Number 176.

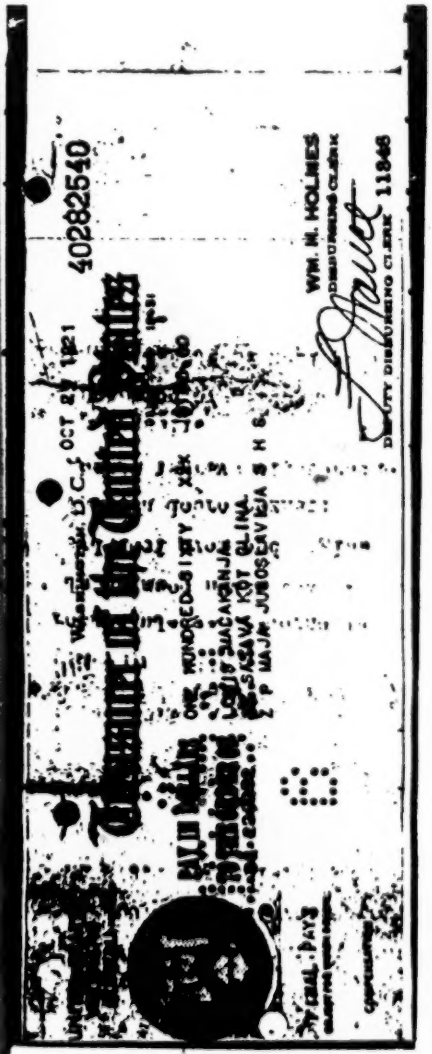
22. That the Treasurer of the United States, upon receipt of the said check, paid the same by crediting the Federal Reserve Bank of New York with the amount of said check.

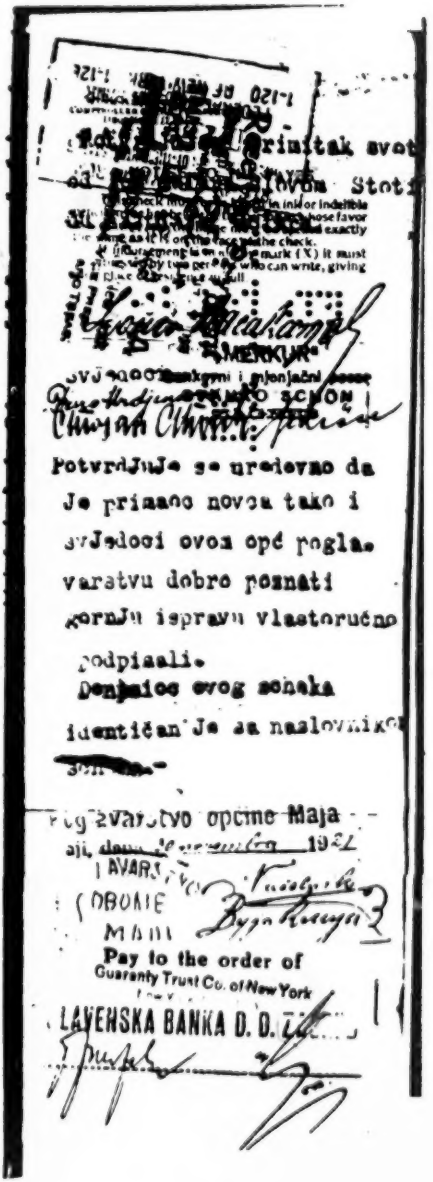
23. That the Federal Reserve Bank of New York credited the defendant with the amount of the said check in December 1921.

24. That thereafter and on or about April 27, 1926, the plaintiff first ascertained that the payee's signature on the said check was forged and immediately thereafter and on the 1st day of June 1926, requested reclamation through the Federal Reserve Bank of New York, from the defendant.

25. That thereafter the defendant denied liability.

PLAINTIFF'S EXHIBIT No. 2





27 26. That thereafter this suit was brought.

Dated New York, N. Y., March 1, 1933.

GEORGE Z. MEDALIE,
United States Attorney, Attorney for Plaintiff.
DAVIS, POLK, WARDWELL, GARDINER & REED,
Attorneys for Defendant.

The plaintiff introduced in evidence a photostatic copy of the check involved in the suit which was marked "Plaintiff's Exhibit No. 2." Both sides then rested.

Motions for directed verdict

The plaintiff moved for a directed verdict.

The defendant moved for a directed verdict.

The court directed a verdict in favor of the plaintiff for $160 with interest from June 1, 1926, and denied the defendant's motion for a directed verdict, to which the defendant duly took an exception.

PLAINTIFF'S EXHIBIT NO. 1

(This exhibit consists of a stipulation of facts signed by the attorneys for the respective parties in this action dated March 1, 1933, and is set forth in full above.)

29 In United States District Court

[Title omitted.]

Stipulation settling bill of exceptions

It is hereby stipulated and agreed by and between the attorneys for the respective parties above named that the foregoing bill of exceptions upon the trial before Honorable Francis G. Caffey, together with the foregoing exhibits annexed thereto, is a true and correct record of the proceedings upon said trial, containing and including the said exhibits and all of the evidence admitted thereupon, and that the same may be settled, made and filed as such bill of exceptions without further notice.

Dated New York, N. Y., July 17, 1933.

GEORGE Z. MEDALIE,
United States Attorney, Attorney for Plaintiff.
DAVIS, POLK, WARDWELL, GARDINER & REED,
Attorneys for Defendant.

30 In United States District Court

[Title omitted.]

Order settling bill of exceptions

Upon reading the annexed stipulation, it is hereby ordered that the foregoing bill of exceptions be and hereby is settled, made and filed as the bill of exceptions herein of the proceedings upon the trial before the undersigned United States district judge, and that the same contains with the annexed exhibits all of the evidence admitted upon said trial, and it is hereby ordered on file.

Dated New York, N. Y., July 17, 1933.

FRANCIS G. CAFFEY,
U. S. D. J.

31 In United States District Court, Southern District of New York

L. 45/245

UNITED STATES OF AMERICA, PLAINTIFF
v.
GUARANTY TRUST COMPANY OF NEW YORK, DEFENDANT

Opinion, Caffey, D. J.

The condition of the calendar is such that it would be well nigh inexcusable to postpone decision until time can be found for preparation of a memorandum fully discussing the numerous interesting

questions involved. Moreover, a statement by a trial judge of that type would do no good in a case, such as this, in which both parties are amply able to appeal and, until final determination by an appellate court, continuance of uncertainty as to the governing law is inevitable. Accordingly, I have confined myself to reaching a conclusion as to what I think the result should be.

A verdict will be directed in favor of the plaintiff for $160, with interest from June 1, 1926, the date of demand. The defendant may have an exception.

FRANCIS G. CAFFEY,
United States District Judge.

Dated May 22, 1933.

32 In United States District Court, Southern District of New York

L. 45–245

UNITED STATES OF AMERICA, PLAINTIFF

v.

GUARANTY TRUST COMPANY OF NEW YORK, DEFENDANT

Judgment

The issues in this case having been regularly brought on for trial before the Honorable Francis G. Caffey, district judge, and a jury of one, at a stated term of this court held on the 15th day of May 1933, in the Woolworth Building, Borough of Manhattan, city of New York, and the plaintiff appearing by George B. Schoonmaker, assistant United States attorney, of counsel, and the defendant appearing by Russel S. Coutant, Esq., of counsel, and the allegations and proofs on behalf of the plaintiff and the defendant having been heard and considered and thereafter at the close of the testimony for both sides, the counsel for the plaintiff having moved for the direction of a verdict in favor of the plaintiff and the counsel for the defendant having moved for the direction of a verdict in favor of the defendant and thereafter the Court having directed a verdict in favor of the plaintiff for the sum of $160.00, with interest from June 1, 1926, and the jury having returned a verdict for the plaintiff for $160.00 with interest from June 1, 1926, in accordance with the direction of the Court and the plaintiff's costs having been taxed in the sum of $32.12.

33 Now on motion of George Z. Medalie, United States Attorney for the Southern District of New York, on behalf of the plaintiff, it is

Ordered and adjudged that the United States of America, the plaintiff herein, have and recover of the Guaranty Trust Company of New York, the defendant herein, the sum of $160.00, with interest

from June 1, 1926, being in the sum of $67.20 and the further sum of $32.12 costs as taxed, making a total sum of $259.32, and that the plaintiff have execution therefor.

Judgment signed this 1st day of June 1933.

CHARLES WEISER, *Clerk.*

In United States District Court

[Title omitted.]

Petition for appeal

To the honorable the Judges of the United States District Court for the Southern District of New York:

Now comes Guaranty Trust Company of New York, de-
34 fendant above named, and says that on or about the 1st day of June 1933, this court entered judgment herein in favor of the plaintiff and against this defendant, which judgment ordered and adjudged that plaintiff recover of defendant the sum of $227.20, besides the costs of this action taxed at $32.12, and have execution therefor; and that in said judgment and the proceedings had prior thereto in this cause certain errors were committed to the prejudice of this defendant, all of which will more in detail appear in the assignment of errors which is filed with this petition.

Wherefore, this defendant prays that an order may issue in its behalf allowing defendant to appeal to the United States Circuit Court of Appeals for the Second Circuit for the correction of errors so complained of, and that a transcript of the record, proceedings and papers in this cause duly authenticated may be sent to the aforesaid Circuit Court of Appeals.

Your petitioner submits herewith good and sufficient bond securing the payments of costs and further prays for an order approving the said bond.

Dated New York, N. Y., July 10, 1933.

DAVIS, POLK, WARDWELL, GARDINER & REED,
Attorneys for Defendant,
Office and Post Office Address: 15 Broad Street,
Borough of Manhattan, New York, N. Y.

35 In United States District Court

[Title omitted.]

Order Allowing Appeal—July 10, 1933

Defendant above named having prayed for the allowance of an appeal to the United States Circuit Court of Appeals for the Second Circuit from the judgment made and entered in the above entitled

cause by the United States District Court for the Southern District of New York on June 1, 1933, and from each and every part thereof, and having presented and filed its petition for appeal, assignment of errors, and prayer for reversal, pursuant to the statutes and the rules of said Circuit Court of Appeals for the Second Circuit in such case made and provided;

It is now here ordered that an appeal be and the same hereby
36 is allowed in this cause to the United States Circuit Court of Appeals for the Second Circuit from said District Court in the manner and to the extent prayed and as provided by law; and it is

Further ordered that the clerk of said District Court shall prepare and certify a transcript of the record, proceedings and judgment in this cause, and transmit the same under the seal of this court to the United States Circuit Court for the Second Circuit, so that he shall have the same in said court within thirty days of this date; and it is

Further ordered that the bond for costs submitted herein by the defendant be, and the same hereby, is approved.

HENRY W. GODDARD,
U. S. D. J.

In United States District Court

[Title omitted.]

Assignment of errors

Now comes Guaranty Trust Company of New York, the defendant above named, and in connection with its petition for allowance
37 of an appeal herein, files the following assignment of errors upon which said defendant will rely in prosecution of the said appeal from the judgment of this court entered on the first day of June 1933:

First. The court erred in directing a verdict in favor of the plaintiff.

Second. The court erred in failing and refusing to direct a verdict in favor of the defendant.

Third. The court erred in failing and refusing to find that a "warranty of prior endorsements" is nothing more than a warranty that the prior endorsements on the check involved are sufficient to pass title, and that such a warranty is merely a warranty of the good title of the holder in the check.

Fourth. The court erred in failing and refusing to find that the theory of an action of this type is that money has been paid out under a mistake of fact, and in reliance upon a warranty of good title, to a person who has no right to receive the same since that person actually has no title in the check, and that, therefore, the primary question to be determined in such an action is whether the defendant had good title to the check at the time of payment.

Fifth. The court erred in failing and refusing to find that the defendant had good title to the check involved in this action when the defendant presented the same for payment to Federal
38 Reserve Bank of New York, as fiscal agent of the plaintiff, and was justified in retaining the proceeds thereof.

Sixth. The court erred in failing and refusing to find that the said check was negotiated and transferred to the defendant in the Kingdom of Jugo-Slavia.

Seventh. The court erred in failing and refusing to find that the law of the Kingdom of Jugo-Slavia, rather than the American common law, as embodied in the negotiable instruments law, governed the transfer of the said check to the defendant.

Eighth. The court erred in failing and refusing to find that the defendant obtained a good title to the said check under the law of the Kingdom of Jugo-Slavia.

Ninth. The court erred in applying the American common law, as embodied in the negotiable instruments law, instead of the law of the Kingdom of Jugo-Slavia, to determine whether the defendant had a good title to the said check.

Tenth. The court erred in failing and refusing to find that the defendant, in taking the said check, acquired the same title which its transferor, the "Slavenska" bank had in the said check.

Eleventh. The court erred in failing and refusing to apply the rule that the transfer of a negotiable instrument, and the
39 rights obtained by a transferee thereof, are governed by the law of the place of the transfer.

Twelfth. The court erred in failing and refusing to find that the "Merkur" bank obtained a good title to the check involved in this action when the same was transferred to the said bank in the Kingdom of Jugo-Slavia.

Thirteenth. The court erred in failing and refusing to find that the "Slavenska" bank obtained a good title to the check involved in this action when the same was transferred to the said bank in the Kingdom of Jugo-Slavia.

Wherefore, defendant prays that the said judgment of the United States Court for the Southern District of New York in said cause be reversed, and judgment be rendered in favor of said defendant, with costs.

DAVIS, POLK, WARDWELL, GARDINER & REED,
Attorneys for Defendant,
Office & post office address: No. 15 Broad Street,
Borough of Manhattan, City of New York.

40 [Citation in usual form omitted in printing.]

41 In United States District Court

[Title omitted.]

Stipulation as to record

It is hereby stipulated and agreed that the foregoing is a true transcript of the record of the said district court in the above cause as agreed upon by the parties.

Dated New York, N. Y., July —, 1933.

GEORGE Z. MEDALIE,
United States Attorney,
Attorney for plaintiff-respondent.

DAVIS, POLK, WARDWELL, GARDINER & REED,
Attorneys for defendant-appellant.

42 [Clerk's certificate to foregoing transcript omitted in printing.]

43 In United States Circuit Court of Appeals for the Second Circuit

No. 117. October term, 1933

Argued January 11, 1934. Decided March 12, 1934

UNITED STATES OF AMERICA, PLAINTIFF-APPELLEE
v.
GUARANTY TRUST COMPANY OF NEW YORK, DEFENDANT-APPELLANT

Appeal from the District Court of the United States for the Southern District of New York.

Before Manton, Augustus N. Hand, and Chase, Circuit Judges.

Appeal from a judgment of the District Court for the Southern District of New York in favor of the plaintiff in an action at law. Reversed.

Martin Conboy, United States Attorney, and George B. Schoonmaker, Assistant United States Attorney, both of New York City.

Davis, Polk, Wardwell, Gardiner & Reed, of New York City (Russel S. Coutant and Francis W. Phillips, both of New York City, of counsel), for appellant.

Opinion

CHASE, *Circuit Judge:*

The defendant presented to the Federal Reserve Bank at New York a check drawn on the Treasurer of the United States on October 29, 1921, and payable to the order of Louis Macakanja, 37 Sasava Kot Glina, Z. P. Maja, Jugo-Slavia, and received credit for it. The check then was indorsed in the name of the payee. The Federal Reserve Bank of New York presented the check to the Treasurer of the United States, who paid it by giving the Federal Reserve bank credit for it in December 1921.

About April 27, 1926, the plaintiff learned that the payee's indorsement on the check was forged, and thereupon demanded reimbursement from the defendant of the money it paid upon presentment of the check. Upon denial by the defendant of liability, this suit was brought.

The essential facts were stipulated, and are that the indorsement of the payee was forged in Jugo-Slavia where the check was then transferred and delivered to the Merkur Bank which took it without notice of the forgery and for a valuable consideration on or about November 30, 1921. This bank acted in good faith and without negligence. It indorsed and transferred the check to the Slavenska Bank D. D. Zagreb, in Jugo-Slavia, for a valuable consideration. The Slavenska Bank acted in good faith without notice of the forgery and without negligence. This bank indorsed the check in Jugo-Slavia to the order of the defendant on or about December 3, 1921, and forwarded it to the defendant in New York. The defendant received it on or about December 21, 1921, and took it for value in good faith without notice of the forgery and without negligence.

It was stipulated that:

"The law of the Kingdom of Jugo-Slavia in reference to checks and bills of exchange is as follows:

"Upon the negotiation and transfer of a check or bill of exchange each transferee, endorsee, or holder thereof obtains a good title to the instrument and acquires the right to collect and retain the proceeds thereof, even though the endorsement of the payee is forged where

"(a) The instrument purports to bear a chain or series of endorsements from the payee of the instrument to the transferee, holder or endorsee thereof; and

44 "(b) The said transferee, holder or endorsee gives valuable consideration for the instrument; and

"(c) The said transferee, holder or endorsee takes the instrument without actual notice of any forgery or other defect in the instrument and is not guilty of any fraud or gross negligence in taking the instrument.

"The law of Jugo-Slavia further provides that

"(a) When an endorsement follows a blank endorsement there is a presumption of law that the person who executed the endorsement has acquired title to the instrument under the blank endorsement; and

"(b) The transferee, holder, or endorsee of the instrument is under no duty or obligation to investigate the genuineness of prior endorsements.

"Under the law of Jugo-Slavia, an endorser does not guarantee or warrant the genuineness of prior endorsements.

"The law, as above stated, was in 1921 and still is in full force and effect in Jugo-Slavia."

Before the defendant presented the check for payment it stamped its indorsement upon it with the words "Previous endorsements guaranteed."

It is conceded that, if the forged indorsement had been in this country, subsequent holders of the check would have acquired no title and that the plaintiff could have recovered upon the theory that the defendant had no right to receive payment under the law of the District of Columbia where this check was payable and so had been unjustly enriched. But under the law of Jugo-Slavia the Slavenska Bank had a good title even though the payee's indorsement was forged. By transferring that title to the defendant, it put the defendant in the same position to demand and receive payment that the Slavenska Bank was in when it had the check. The decision, accordingly, turns on whether or not the law of Jugo-Slavia controls and is to be given effect.

This question is certainly not without difficult implications. The cases in which it has arisen are surprisingly few. While it may truly be said that in dealing with commercial paper we are concerned primarily with the obligations of parties to it rather than strictly with title as the term is applied to tangible chattels, the obligations of the parties must nevertheless be dependent upon the title which the holder of the paper has acquired. In deciding what title this defendant had when it presented the check for payment we may have regard to the general rule of law relating to the transfer of title to chattels. The analogy in many respects is close. It is clear that the validity of a transfer of title to chattels is governed by the law of the country in which the transfer takes place. Banque de France v. Chase Nat. Bank of City of New York (C. C. A. 2) 60 F. (2d) 703. The rule has been applied to the transfer of stock certificates, Direction Der Disconto-Gesellschaft v. U. S. Steel Co., 267 U. S. 22, 45 S. Ct. 207, 69 L. Ed. 495; New York Trust Co. v. Island Oil & Transport Co. (C. C. A.) 33 F. (2d) 104, 79 A. L. R. 1007; and to the transfer of promissory notes; Brook v. Vannest, 58 N. J. Law, 162, 33 A. 382; Mackintosh v. Gibbs, 81 N. J. Law, 577, 80 A. 554, Ann. Cas. 1912D, 163; Dundas et al. v. Bowler et al., 8 Fed. Cas. 30, no. 4,141. In Guernsey v. Imperial Bank of Canada (C. C. A.) 188 F. 300, 40 L. R. A. (N. S.) 377, it was recognized that the indorsement of commercial paper is an independent contract whose validity depends upon compliance with the law at the place of indorsement. See also, McClintick v. Cummins, 15 Fed. Cas. 1272, no. 8,699; Minor Conflict of Laws, § 165; Tentative Restatement of Conflict of Laws, American Law Institute, § 282.

This check was sent by the maker to Jugo-Slavia. It is apparent that its transfer by indorsement and delivery in that country was to be expected. There is no discernible hardship in applying the general rule above set forth and testing the title acquired by transferees by the law of that country. Nor does the fact that the payee's indorsement was forged require us to take a different attitude. Prof.

Lorenzen, in the Conflict of Laws Relating to Bills and Notes, discusses this question at pages 139 and 140, and, after pointing out that the Anglo-American law and that of the continental countries reflect different views as to whether "the owner of a negotiable instrument whose signature has been forged or whether the party who in good faith acquired such instrument should be protected", reaches the conclusion that it is all merely a question of commercial policy, and that no moral issues are involved which would prevent our enforcing the continental rule. He says further, "In the opinion of the author the uniform act should provide that each
45 party be held if the holder of the instrument has acquired title in accordance with the municipal law of the State where such party's contract was made, but that title acquired in conformity with the law of the place of transfer shall be recognized with respect to all parties." To this we agree, and do so the more readily because in England, where forged indorsements are treated as they are with us, the question here presented was decided in the case of Embiricos v. Anglo-Austrian Bank, 1 L. R. (1905) 1 K. B. 677. A check was drawn in Roumania on a bank in London where it was payable to the plaintiffs who indorsed the check in Roumania specially to a London firm. It was then stolen and presented to a bank in Vienna, Austria, with the forged indorsement of the London firm to which it had been made payable by the special indorsement, and the Vienna bank cashed it in good faith without notice of the forgery. The Vienna bank indorsed it to a bank in London to which the check was at once sent by mail. It was unanimously held in the English Court of Appeal that the validity of the transfer to the Vienna bank should be determined in accordance with the law of Austria. To like effect is the decision in Alcock v. Smith (1892) 1 Ch. 238. And this rule is recognized in New York also. In Weissman et al. v. Banque de Bruxelles, 254 N. Y. 488, 173 N. E. 835, 837, Judge Pound said: "The rule of international law, that the validity of a transfer of movable chattels must be governed by the law of the country in which the transfer takes place, applies to the transfer of checks or bills of exchange by indorsement." Compare Hutchinson v. Ross, 262 N. Y. 381, 187 N. E. 65.

The action of the defendant in stamping the statement "Previous endorsements guaranteed" on the check before presenting it for payment is urged as a basis of recovery. Ordinarily such a warranty means that the indorser warrants that previous indorsements are genuine and payment made in reliance upon the warranty may be recovered upon proof that such an indorsement is not. Onondaga County Savings Bank v. U. S. (C. C. A. 2) 64 F. 703; United States v. National Exchange Bank, 214 U. S. 302, 29 S. Ct. 665, 53 L. Ed. 1006, 16 Ann. Cas. 1184; Farmers' State Bank v. United States (C. C. A.) 62 F. (2d) 178. But this is so when previous indorsements must be genuine to give a good title to the one who guarantees

them. The guaranty is one of the title rather than of authentic penmanship or its equivalent. When, as here, the indorsements are of the same sufficiency in law that they would be if all were genuine, the warranty is in accord with the legal situation, and there is no breach.

Judgment reversed.

46 In United States Circuit Court of Appeals, Second Circuit

UNITED STATES, PLAINTIFF-APPELLEE

v.

GUARANTY TRUST COMPANY OF NEW YORK, DEFENDANT-APPELLANT

Judgment filed March 19, 1934

Appeal from the District Court of the United States for the Southern District of New York.

This cause came on to be heard on the transcript of record from the District Court of the United States for the Southern District of New York, and was argued by counsel.

On consideration whereof, it is now hereby ordered, adjudged, and decreed that the judgment of said district court be, and it hereby is, reversed.

It is further ordered that a mandate issue to the said district court in accordance with this decree.

WM. PARKIN, *Clerk.*

47 [File endorsement omitted.]

48 [Clerk's certificate to foregoing transcript omitted in printing.]

49 Supreme Court of the United States

Order allowing certiorari

Filed October 8, 1934

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

File No. 38748. U. S. Circuit Court of Appeals, Second Circuit. Term No. 120. The United States of America, petitioner, *v.* Guaranty Trust Company of New York. Petition for a writ of certiorari and exhibit thereto. Filed June 19, 1934. File No. 120 O. T. 1934.

U. S. GOVERNMENT PRINTING OFFICE: 1934